

1 KEN M. MARKOWITZ (SBN 104674)  
 2 SAMANTHA D. HILTON (SBN 215585)  
 3 KENNEY & MARKOWITZ L.L.P.  
 255 California Street, Suite 1300  
 4 San Francisco, CA 94111  
 Tel: (415) 397-3100  
 5 Fax: (415) 397-3170  
 Email: kmarkowitz@kenmark.com  
 shilton@kenmark.com

6 Attorneys for Defendant  
 AMERICAN MEDICAL SYSTEMS, INC.

7 DAN JOHNSON (*Pro Hac Vice*)  
 8 AMERICAN MEDICAL SYSTEMS, INC.  
 10700 Bren Road West  
 9 Minnetonka, MN 55343  
 Tel: (952) 933-4666  
 10 Fax: (952) 930-6157  
 Email: Dan.Johnson@AmericanMedicalSystems.com

11 Attorneys for Defendant  
 12 AMERICAN MEDICAL SYSTEMS, INC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN FRANCISCO – ECF PROGRAM  
 16

18 ELLEN AMBROFF and TERRY  
 19 AMBROFF,

20 Plaintiffs,

21 v.

22 AMERICAN MEDICAL SYSTEMS, INC.,  
 and DOES ONE through TWENTY-FIVE,  
 23 inclusive,

24 Defendants.

CASE NO. C08-04289 JL

**STIPULATION AND ~~(PROPOSED)~~  
 ORDER TO CONTINUE EARLY  
 NEUTRAL EVALUATION**  
 Civil L.R. 7-12

25  
 26 This Stipulation is entered into between Plaintiffs, Ellen Ambroff and Terry Ambroff, by  
 27 and through their counsel of record, Hersh and Hersh, a professional corporation, and Defendant,  
 28 American Medical Systems, Inc., by and through its counsel of record, Kenney & Markowitz,

Kenney  
 &  
 Markowitz  
 L.L.P.

1 L.L.P. The parties stipulate as follows:

2 1. Prior to the Initial Case Management Conference on December 17, 2008, the  
3 parties agreed to Early Neutral Evaluation as their choice of Alternative Dispute Resolution  
4 pursuant to ADR L.R. 3-3 and Civil L.R. 16-2.

5 2. On December 29, 2008, the Court referred this action to ENE and assigned neutral,  
6 Jacqueline Scott Corley, on January 8, 2009. The Court ordered that the ENE be completed on or  
7 before March 17, 2009.

8 3. On January 14, 2009, counsel for AMS filed a Notice of Pendency of Other Action  
9 providing the Court with details of a related action entitled *Ellen Ambroff, Terry Ambroff v. Robert*  
10 *E. Carter, M.D., et al.*, Case No. PC 20080322, that was filed on or about May 30, 2008 in the  
11 California Superior Court, El Dorado County. AMS believes that the actions filed in this Court  
12 and in the Superior Court concern the same subject matter, namely, the implantation of plaintiff  
13 Ellen Ambroff with the Apogee™ mesh system in June 2006, and substantially all of the same  
14 parties pursuant to Rule 3-13 of the Civil Local Rules. AMS further believes that the defendants  
15 in both actions are disadvantaged by this procedural tactic and that separate actions waste judicial  
16 and other resources. Plaintiffs disagree on the grounds that plaintiffs believe that the state and  
17 federal actions do not involve the same parties nor the same causes of action. Therefore, if AMS is  
18 to join the state court action, it must file a motion in the state court action and, if granted, a motion  
19 to stay in this Court, which may take several months.

20 4. On January 29, 2009, Court-appointed neutral, Jacqueline Scott Corley, initiated a  
21 telephone conference with the parties to schedule an ENE. This issue of the related actions was  
22 discussed along with the possibility that the ENE would be continued if the parties did not resolve  
23 the disputed forum-related issue prior to the date scheduled. The current date set for ENE is March  
24 4, 2009.

25 5. The parties stipulate and respectfully request that the Court vacate the current ADR  
26 completion deadline of March 17, 2009 and continue the ADR completion date by an additional  
27 90 days to June 15, 2009.

28  
Kenney  
&  
Markowitz  
L.L.P.

1           6.       The parties have discussed the forum related issue and possible ENE continuance  
2 with Court-appointed neutral, Jacqueline Scott Corley. Ms. Corley also believes that a continuance  
3 is in the best interest of the parties given the procedural posture of the action and consents to a  
4 continuance of the ENE.

5           Respectfully submitted,

7 DATED: February 17, 2009

**KENNEY & MARKOWITZ L.L.P**

9 By: \_\_\_\_\_/s/  
10           KEN M. MARKOWITZ  
11           SAMANTHA D. HILTON  
12           Attorneys for Defendant  
13           AMERICAN MEDICAL SYSTEMS INC.

12 DATED: February 17, 2009

**HERSH AND HERSH**

14 By: \_\_\_\_\_/s/  
15           AMY ESKIN  
16           Attorney for Plaintiff  
17           ELLEN AND TERRY AMBROFF

17 **~~PROPOSED~~ ORDER**

18           Pursuant to the parties' stipulation, the Alternative Dispute Resolution completion deadline  
19 of March 17, 2009, is vacated. The parties are to complete Early Neutral Evaluation on or before  
20 June 15, 2009.

21           IT IS SO ORDERED.

22 DATED: 2/19/09 \_\_\_\_\_

23   
24 \_\_\_\_\_  
25           JAMES LARSON  
26           UNITED STATES MAGISTRATE JUDGE

27           Kenney  
28           &  
          Markowitz  
          L.L.P.